IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH JUDICIAL CIRCUIT

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| DOUGLAS W. HALL,<br><br>Appellant,<br><br>vs.<br><br>LAWRENCE E. WILSON, Warden, California State Prison, Tamal, California,<br><br>Appellee. | ) | No. 22603 |

# APPELLEE'S BRIEF


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# TOPICAL INDEX


| | Page |
|---|---|
| JURISDICTION | 1 |
| STATEMENT OF THE CASE | |
| Proceedings in the State Courts | 1 |
| Proceedings in Federal Court | 2 |
| SUMMARY OF APPELLANT'S ARGUMENTS | 2 |
| SUMMARY OF APPELLEE'S ARGUMENT | 4 |
| ARGUMENT | |
| I. APPELLANT'S PLEA OF GUILTY WAS VOLUNTARILY AND PROPERLY RECEIVED BY THE TRIAL COURT. | |
| A. Appellant's plea of guilty was not induced by any evidence obtained in violation of his constitutional rights. | 5 |
| B. No statements were taken from appellant in violation of either his Fifth or Sixth Amendment rights. | 10 |
| II. APPELLANT WAS EFFECTIVELY REPRESENTED BY TRIAL COUNSEL. | 11 |
| III. APPELLANT WAS NOT PREJUDICED BY NOT BEING REPRESENTED BY COUNSEL AT THE ARRAIGNMENT FOR EXTRADITION. | 11 |
| CONCLUSION | 12 |

## TABLE OF CASES


| | Page |
|---|---|
| Adams v. United States<br>336 F.2d 752 (D.C. Cir. 1964) | 9 |
| Cooper v. California<br>386 U.S. 59, 87 S.Ct. 788 (1967) | 8 |
| Crawford v. Bannon<br>336 F.2d 505 (6th Cir. 1964) | 9 |
| Johnson v. New Jersey<br>384 U.S. 719 (1966) | 10 |
| Miranda v. Arizona<br>384 U.S. 436 (1966) | 10 |
| Peek v. United States<br>321 F.2d 934 (9th Cir. 1963) | 11 |
| Preston v. United States<br>376 U.S. 364 (1964) | 8 |
| Rabinowitz v. United States<br>339 U.S. 56 (1950) | 9 |
| Reid v. United States<br>334 F.2d 934 (9th Cir. 1963) | 11 |

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APPELLEE'S BRIEF

JURISDICTION

The jurisdiction of the United States District Court to entertain appellant's petition for writ of habeas corpus was conferred by Title 28, U.S.C., section 2241. The jurisdiction of this Court is conferred by Title 28, U.S.C., section 2253, which makes a final order in a habeas corpus proceeding reviewable in the Court of Appeals when, as in this case, a certificate of probable cause has issued.

STATEMENT OF THE CASE

Proceedings in the State Courts:

Appellant was convicted in the superior court of the State of California for the County of Yolo on May 5, 1965, of violating Penal Code section 211: to wit, armed robbery (CT 102). Appellant's request to file a late notice of appeal was denied by the California Court of Appeal. On April 4, 1966, appellant petitioned the Marin County Superior Court for a writ of habeas corpus. On May 11, 1966, appellant

petitioned the Court of Appeal for a writ of habeas corpus. On June 1, 1966, appellant petitioned the California Supreme Court for a writ of habeas corpus. The petitions were denied in all three cases (CT 4-6).

Proceedings in Federal Court:

On August 3, 1966, appellant filed an application for a writ of habeas corpus in the United States District Court for the Northern District of California (CT 1-19). On December 14, 1966, the District Court issued an order denying the petition (CT 20, 21). On December 16, 1966, appellant filed a supplemental points and authorities (CT 22-37). On February 13, 1967, the District Court issued an order to show cause (CT 38). On March 21, 1967, appellee filed a return to the order to show cause (CT 41-104). On April 14, 1967, appellant filed a traverse to the return (CT 107-122).

On January 15, 1968, the District Court issued an order discharging the order to show cause and denying appellant's petition (CT 141-148). On February 5, 1968, appellant filed an application for a certificate of probable cause (CT 149-161). On February 8, 1968, an order was entered granting the appellant's application for a certificate of probable cause and allowing him to appeal in forma pauperis (CT 166).

## SUMMARY OF APPELLANT'S ARGUMENTS

1. Appellant's arrest was illegal and without jurisdiction, that the evidence the warrant was based on was insufficient to satisfy the proscription of California Penal Code section 1551, which the warrant was issued under. Therefore, the warrant was void for lack of jurisdiction.

2. The search of his automobile was illegal for lack of probable cause. Subsequent seizure of property from within the automobile was also illegal. Therefore, rendering all fruits of said search and seizure inadmissible, unlawful, and unconstitutional.

3. Appellant's not being afforded counsel at arraignment on the (1551) extradition matter was prejudicial and detrimental.

4. The fruits of the illegal search and seizure were responsible for appellant being compelled to appear in a number of line-ups at the Solano County Jail, which subsequently led to his being identified from line-up as one of two men who had allegedly robbed the Hi-way Market in Yolo County on the evening of April 1, 1965.

5. The threat of additional charges being filed against appellant if he did not cooperate, was coercive, unlawful, and unconstitutional. Appellant was unaware of the laws concerning multiple punishments. He was lead to believe that multiple charges could and would be filed against him should he go against the wishes of the officers.

6. The testimony of the one State's witness, the only one of the three witnesses for the prosecution who even claimed to identify this appellant was in itself insufficient to support the charge of first degree robbery for which appellant stands convicted.

7. Appellant was not effectively informed of his constitutional rights under the Dorado rules. That he was coerced into making a statement to the officers and said

statement was involuntary and therefore unconstitutional.

8. That said statement was in part, brought about by the unlawful threat of having more charges filed against him should he fail to cooperate. Said threat could not have (lawfully) been carried out, therefore, amounted to coercion and duress.

9. That he did not receive proper and effective aid of counsel from the Public Defender, Mr. Joe Martin, who was appointed to represent appellant in the Yolo County Court proceedings. That said counsel did not investigate the case, the possible defenses, nor did he advise the appellant of any possible defenses. That said counsel was more interested in the co-defendant's wife, than he was in defending the appellant and his co-defendant as he had been appointed to do.

10. That this combination of circumstances, all of which were illegal, were responsible for the guilty plea of appellant. That under these circumstances he felt that he had no alternative but to plead guilty.

11. That the District Court erred in not either granting the writ and reversing the conviction, or in the alternative, granting an evidentiary hearing to resolve the foregoing issues.

## SUMMARY OF APPELLEE'S ARGUMENT

I. Appellant's plea of guilty was voluntary and properly received by the trial court.

A. Appellant's plea of guilty was not induced by any evidence obtained in violation of his constitutional

rights.

B. No statements were taken from appellant in violation of either his Fifth or his Sixth Amendment rights.

II. Appellant was adequately represented by his trial counsel.

III. Appellant was not prejudiced by not being represented by counsel at the arraignment for extradition.

## ARGUMENT

### I.

### APPELLANT'S PLEA OF GUILTY WAS VOLUNTARILY AND PROPERLY RECEIVED BY THE TRIAL COURT.

Appellant's essential contention appears to be that he was improperly induced to plead guilty to the charge for which he stands convicted. He alleges, that he made incriminating statements to certain police officers without being first warned of his constitutional rights. He also alleges that the police unlawfully searched his vehicle and seized certain items of evidence. He now claims that he pleaded guilty because he knew that the prosecuting authorities possessed this improperly obtained evidence.

#### A. Appellant's plea of guilty was not induced by any evidence obtained in violation of his constitutional rights.

It might be helpful at this point to state a short summary of the facts surrounding the arrest of appellant. Appellant claims that he and his co-defendant Rives, were arrested inside a coffee shop in Vallejo, California, on the night of April 1, 1965; that they were then taken to

Vallejo Police Station and shown a photocopy of telegrams from Texas, which showed warrant numbers and requested the arrest of appellant and Rives; that they were then questioned concerning a bag of money and guns that the police had seized from the automobile, which had been parked in an adjoining parking lot next to the coffee shop; that later on April 2, 1965, appellant was identified from a line-up as one of two men who had allegedly robbed a food store in Yolo County on April 1, 1965; that after the identification, he was questioned by two officers from Yolo County concerning the robbery; that he made a confession to the officers concerning the robbery of the Hi-way Market in Yolo County; and that, just prior to his preliminary hearing, he saw an officer standing near the courtroom door with a gun that had been seized from his automobile.

The district court ruling on this point stated:

> "Generally, the conviction and sentence which follow a plea of guilty are based solely upon said plea and not upon any evidence which may have been improperly acquired by the prosecuting authorities. Wallace v. Heinze, 351 F.2d 39 (9th Cir. 1965). An exception to this rule is that, where the plea of guilty is induced by a coerced confession, or in some other respect not truly voluntary, then such plea cannot stand. 'The distinction is,' according to the Ninth Circuit in Doran v. Wilson, 369 F.2d 505, 507 (9th Cir. 1966) 'that if such a violation is not claimed to be, or, if so claimed, is not what

induced the plea, then reliance upon the violation in habeas corpus by the one who pleaded guilty is not justified because it is the plea, not the deprivation of constitutional right, that brought about the conviction, while the plea can be upset if it was induced by the violation.'

"The court in Doran, supra, however, made it clear that a plea of guilty can still be free and voluntary even though a violation of one's constitutional rights had occurred.

"In the instant case it is clear from the petition, even assuming that evidence had in fact been illegally seized from petitioner's car, that the plea of guilty was motivated, not only by the illegally seized evidence, but also because of the implied threat of more charges being filed against him, petitioner's hope that he might be granted probation, the testimony of the eye witness at the preliminary hearing, and petitioner's confession, which this Court has already above held to have been lawfully obtained under the standards set forth in Escobedo v. Illinois, supra." (CT 146:16-32-147:1-12).

The Court went on to say:

"On the basis of the Reporter's Transcript and the petition itself, this Court concludes that petitioner is not entitled to relief. The plea was both intelligent and informed, and no hearing is required to establish that fact. See Grove v.

Wilson, 368 F.2d 414 (9th Cir. 1966). Nowhere in the petition does petitioner contend that the plea was involuntary." (CT 147:26-32).

Appellant's allegation of an induced plea is, as previously indicated, predicated at least in part upon a claim of an illegal search and seizure. However, appellee submits that even assuming, arguendo, that the facts are as stated by the appellant that any search conducted by the police would have been valid as incident to a lawful arrest.

In Preston v. United States, 376 U.S. 364, 366 (1964), the United States Supreme Court reiterated that a search of an automobile must meet the test of reasonableness required by the Fourth Amendment before evidence obtained during the course of a search may be admitted at trial. However, the Court also stated at pages 366-367 that:

"Commonsense dictates, of course, that questions involving searches of motor cars or other things readily moved cannot be treated as identical to questions arising out of searches of fixed structures like houses. For this reason, what may be an unreasonable search of a house may be reasonable in the case of a motor car." See also Cooper v. California, 386 U.S. 59, 87 S.Ct. 788, 790 (1967).

In Preston, the defendants had been arrested for vagrancy, taken to the police station and booked. Their vehicle had been driven to the police station and then towed to a garage. Subsequently, the police officers went

to the garage, searched the vehicle and discovered evidence which was used against the defendants in a subsequent federal prosecution for conspiring to rob a bank. The court held that the warrantless search was too remote in time and place to be incident to the arrest and therefore failed to meet the test of reasonableness. Preston, supra, at 367. However, it appears relevent to note that in the course of its opinion the Court stated that it assumed the police had a right to search the car when they first came on the scene. Preston, supra, at 367-68.

Cases arising since Preston have required the courts to apply its holding to various fact patterns. In Crawford v. Bannon, 336 F.2d 505 (6th Cir. 1964), the court considered the situation where the police searched the suspect's vehicle at the scene of arrest after he had been removed in the patrol wagon. The search was found to be incident to and substantially contemporaneous with the arrest. Citing Rabinowitz v. United States, 339 U.S. 56, 64 (1950), which was also cited in Preston the court determined that the officers were not required to obtain a warrant, even though they may have had time to do so, as long as the search was otherwise reasonable. In Adams v. United States, 336 F.2d 752 (D.C. Cir. 1964), the court after a comprehensive analysis of cases dealing with this question pointed out that there appears to be no case which holds improper a search of an auto at the time and place its occupants are placed under lawful arrest.

Applying the above to the instant case, the

appellee submits that the search of appellant's vehicle was perfectly proper.

B. No statements were taken from appellant in violation of either his Fifth or Sixth Amendment rights.

The appellant also contends that his plea of guilty was induced because of a statement he gave to the police within a day or so after his arrest. He alleges that he was not given the warning required by Miranda v. Arizona, 384 U.S. 436 (1966). Appellee submits, however, that Miranda is not applicable because the judgment was entered in petitioner's case on May 5, 1965. See Johnson v. New Jersey, 384 U.S. 719, 734 (1966).

The District Court concluded that Miranda v. Arizona, supra, was not applicable to the instant case and stated:

"While the requirements of Escobedo v. Illinois, 378 U.S. 478 (1964), would be applicable to petitioner's case, it is clear that Escobedo requires that a request for counsel be made by the person being interrogated. See Manning v. California, ___ F.2d ___, (9th Cir., No. 21484, May 15, 1967).

"In the instant case petitioner does not allege that he requested counsel at the time of the interrogation by the Yolo County officers.

"In any event, this Court concludes, on the basis of petitioner's own contradictory statements above set forth, that even had petitioner requested counsel, the requirements set forth in Escobedo, supra, were complied with in this case." (CT 145:17-31).

II.

APPELLANT WAS EFFECTIVELY REPRESENTED BY TRIAL COUNSEL.

Appellant contends, essentially in a conclusionary manner, that he was not effectively represented by counsel. However, appellant has a heavy burden to sustain when making such an allegation and must show that counsel was, "so incompetent or inefficient as to make the trial a farce or a mockery of justice." Reid v. United States, 334 F.2d 915, 919 (9th Cir. 1964); Peek v. United States, 321 F.2d 934, 944 (9th Cir. 1963). Appellee submits that the appellant has failed to sustain the burden here required.

The District Court commenting on this claim stated:

> "It is the conclusion of this Court that, based upon the Reporter's Transcript of petitioner's arraignment, preliminary hearing and plea on the robbery charge in Yolo County Superior Court, petitioner has failed to allege a prima facie showing that his counsel was not 'rendering reasonably effective assistance' within the constitutional sense so as to justify the holding of an evidentiary hearing. Brubaker v. Dickson, 310 F.2d 30, 37 (9th Cir. 1962)." (CT 144:22-29).

III.

APPELLANT WAS NOT PREJUDICED BY NOT BEING REPRESENTED BY COUNSEL AT THE ARRAIGNMENT FOR EXTRADITION.

It is appellant's final contention that the denial of counsel at the arraignment on extradition was prejudicial

and detrimental.

The district court in dealing with this question stated:

> "With respect to petitioner's assertion that he was without the assistance of counsel during his arraignment, petitioner fails to allege that he was in any way prejudiced thereby. The record shows that the complaint was dismissed by the Solano Municipal Court and, accordingly, this Court concludes that this contention is without merit." (CT 144:16-21).

## CONCLUSION

For the foregoing reasons, the appellee respectfully submits that the order of the district court denying appellant's petition for a writ of habeas corpus should be affirmed.

DATED: June 5, 1968

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## CERTIFICATE OF COUNSEL

I certify that in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit and that, in my opinion, this brief is in full compliance with these rules.

DATED: June 5, 1968.

Ronald H. Kearney

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